

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

WILLIAM MCCLAIN,	)	CASE NO. 4:06 CV 299
	)	
Plaintiff,	)	JUDGE PETER C. ECONOMUS
	)	
v.	)	
	)	<u>MEMORANDUM OF OPINION</u>
MAHONING COUNTY SHERIFF'S	)	<u>AND ORDER</u>
DEPARTMENT,	)	
	)	
Defendant.	)	

On February 7, 2006, plaintiff pro se William McClain filed the above-captioned action under 42 U.S.C. § 1983 against the Mahoning County Sheriff's Department. The complaint alleges that plaintiff was formerly incarcerated at the Mahoning County Jail and that, after his cell was searched, three pictures of his deceased brothers were missing. Plaintiff has not been able to recover the pictures. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915A.

A district court is expressly required to dismiss any civil action filed by a prisoner seeking relief from a governmental officer, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief

from a defendant who is immune from such relief. 28 U.S.C. §1915A

It is well established that section 1983 will not support a claim based upon a theory of respondeat superior alone. Polk County v. Dodson, 454 U.S. 312, 325 (1981). Governmental entities may be deemed liable for the unconstitutional actions of their agents only when those actions are the result of official policies or customs. Monell v. Dept. of Social Services, 436 U.S. 658 (1978). Monell extends to patterns of misconduct in which the supervisor acquiesced. Hays v. Jefferson County, Ky., 668 F.2d 869 (6th Cir. 1982). See also, Bellamy v. Bradley, 729 F.2d 416, 421 (6th Cir. 1984) (requiring a showing that the supervisor encouraged the specific misconduct or in some way directly participated in it).

Thus, even assuming for the sake of argument that plaintiff has otherwise set forth facts sufficient to state a claim, there are no allegations reasonably suggesting that defendant established policies or customs resulting in the violation of plaintiff's constitutional rights. See Salehpour v. University of Tennessee, 159 F.3d 199, 206 (1998)(liability must be based on more than right to control employees); see also Leach v. Shelby County Sheriff, 891 F.2d 1241, 1246 (6th Cir. 1989) (supervisory liability under § 1983 must be based on active unconstitutional behavior).

Accordingly, this action is dismissed under 28 U.S.C. § 1915A. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in

good faith.

IT IS SO ORDERED.

s/Peter C. Economus - 3/16/06  
PETER C. ECONOMUS  
UNITED STATES DISTRICT JUDGE